



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 20, 1995

Mr. Paul Hunn
Walsh, Anderson, Underwood,
Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR95-075

Dear Mr. Hunn:

As counsel for the Goliad Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29840.

The school district received a request for a copy of a report of findings submitted to the Texas Education Agency in regard to a student complaint. You assert that the requested information is excepted from required public disclosure based on section 552.102 of the Government Code. You also assert that the school district need not comply with the request because you say the requestor, who is the father of the student involved in the complaint against the school district, "fails to meet the requirements of [the Family Educational Rights and Privacy Act of 1974] ("FERPA"), . . . 20 U.S.C.A. § 1232g, in that it . . . fails to request the specific student records contained in the report . . . , and specify or provide the written consent of the student's parents specifying the records to be released, and the reasons for release of the specified records."

Section 552.102 of the Government Code states that

[i]nformation is excepted from [required public disclosure] if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

You say this exception applies to the report because the report contains statements that are also found in the personnel files of the employees who made the statements as well in the personnel file of the teacher who is under investigation.

The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Found. v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, information may be withheld under section 552.102 if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The statements at issue contain no intimate or embarrassing facts about the employees' private affairs. Moreover, the public has a legitimate interest in this information. We conclude that the school district may not withhold the statements from required disclosure based on section 552.102 of the Government Code.¹

The requested information is an educational record for purposes of FERPA. *See* 20 U.S.C. § 1232g(4)(A). You say the request for information does not comply with section 1232g(b)(2) of FERPA. However, that provision sets forth the requirements of a valid consent for the release of education records to a third party. *See id.* § 1232g(b)(1) (requiring parental consent for release to any individual, agency, or organization, other than certain enumerated parties). FERPA does not require parental consent for a parent to gain access to his child's education records. *See id.*, § (1)(A); *see also* 34 C.F.R. §§ 99.10 (with certain limitations, requiring each educational agency or institution to allow parental access to educational records), .31(a)(12) (stating parental consent is not required when disclosure is to the parent of a student who is not an eligible student). Thus, the school district cannot deny the parent here access to his child's education records because his request for information does not conform to the consent requirements of section 1232g(b)(2).

The Open Records Act does not require the release of information contained in education records of an educational agency or institution, except in conformity with FERPA. Gov't Code § 552.026. Under FERPA,

¹The report contains private information about the student who was involved in the incident under investigation. Although this information may not be withheld from the student's father under section 552.102, this information is protected from required *public* disclosure based on the common-law right to privacy. *See* Gov't Code § 552.101; *Industrial Found.*, 540 S.W.2d 668.

[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution . . . the right to inspect and review the education records of their children.

Consequently, in order to continue to receive federal funding, FERPA requires the school district to grant the requestor access to his child's education records. We note that the requestor's child's education records include not only the records requested here, but also the records that were at issue in Open Records Letter No. 90-2 (1990).

Finally, we have marked one small portion of information that identifies another student. The school district must not release this information. Gov't Code § 552.026.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 29840

Enclosures: Submitted documents